



NOTICE OF MODIFICATION OF PROPOSED REGULATIONS

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

Date: November 12, 2004

To: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S CABINET

Subject: Title 2. California Code of Regulations § 211 – Eligibility of Dismissed State Employees to Take Examinations

Under the authority established in Government Code § 18701, and pursuant to Government Code § 11346.8(c), the State Personnel Board (SPB) is providing notice of changes that are being considered regarding the above-named regulation, which was the subject of a public hearing held on November 3, 2004. As a result of written comments received, parts of the regulation have been modified.

A copy of the full text of the regulation as originally proposed and the modifications are attached for your information. SPB's rulemaking file on the proposed action is open to public inspection by appointment Monday through Friday, from 8:00 a.m. to 5:00 p.m. at 801 Capitol Mall, Room 555, Sacramento, CA 95814.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close on Monday, November 29, 2004, at 5:00 p.m. Any person may submit written comments about the proposed modifications. To be considered by SPB, written comments must be received by Daphne Baldwin at the State Personnel Board, 801 Capitol Mall, MS 55, Sacramento, CA 95814, by the close of the written comment period. Written comments may also be e-mailed to Daphne Baldwin at dbaldwin@spb.ca.gov or faxed to (916) 653-1280.

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CONTACT PERSON

Please contact Daphne Baldwin at (916) 653-1529 or TDD (916) 653-1498 for additional information regarding this action. The backup agency contact for this action is Elizabeth Montoya at the State Personnel Board, (916) 653-0842 or TDD (916) 653-1498. Questions regarding the substance of these regulations should be directed to the contact person. Questions regarding the regulatory process in conjunction with these regulations should be directed to the backup contact person.

Joan Allison, Acting Chief
Policy Division

Attachment: Text of regulation as originally proposed and as modified

Modification of Eligibility of Dismissed Employees to Take Examinations Regulation

*Changes to the original text are illustrated in the following manner: regulation language originally proposed is underlined; deletions from the language originally proposed are shown in strikeout using a “-”, and additions to the language originally proposed are **bolded** and double underlined.*

Title 2. ADMINISTRATION Division 1. Administrative Personnel Chapter 1. State Personnel Board Subchapter 1. General Civil Service Regulations Article 8. Examinations

§ 211. Eligibility.

If an employee is dismissed from ~~S~~state employment by adverse action or as a result of disciplinary proceedings, that dismissed employee shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in the state service without the prior consent of the ~~e~~Executive ~~e~~Officer. ~~If such an employee subsequently attains permanent status in the state civil service, the executive officer may grant a continuing waiver of this requirement which may apply to all subsequent examinations for which that employee applies or to those for specified occupations. In all other cases, the executive officer shall determine whether to refuse to examine, or after examination, to declare or certify as eligible anyone for any of the reasons set forth in section 18935 of the act.~~

~~Persons denied permission to compete or be certified under this section may appeal in writing to the Board within 30 days of notification.~~

Dismissed employees' requests to participate in state civil service examinations shall be subject to the following:

- (a) Requests must be filed with the Board at least five (5) working days prior to the final filing date of the examination(s) for which the dismissed employee wishes to apply.
- (b) All requests shall be in writing and accompanied by a completed state examination application.

(c) Requests shall clearly identify the facts, circumstances, and reasons that support the dismissed employee's request to take the examination(s). The request, at a minimum, shall include the date of the dismissal, the reasons for the dismissal, and the reasons why the dismissed employee believes that he or she should be permitted to take the examination(s). The dismissed employee may also submit substantiation of corrected behavior, letters of recommendation, employment evaluations, and other materials and/or declarations to support the request.

(d) Requests will be reviewed on a case-by-case basis, taking into consideration the following factors:

1. The type of examination/classification for which the dismissed employee wishes to apply.
2. The circumstances/causes surrounding the dismissal and any restrictions that impact the request.
3. Any pattern of successful employment after the dismissal.
4. Confirmation/assurance of corrected and/or sustained improved behavior.
5. Acceptance of responsibility for past wrongful actions.
6. Demonstration of readiness to re-enter state service.
7. Information, in writing, from the dismissing department responding to the dismissed employee's request to participate in the examination(s).
- 7.8. Any other factor deemed relevant to the request, including those factors set forth in Government Code Section 18935.

After reviewing these factors **No later than 30 days after receipt of the request**, the Executive Officer shall determine whether to grant the dismissed employee permission to participate in the examination(s). **If the Executive Officer determines that additional time is necessary in order to obtain relevant information he or she may extend the time for determination and notify the dismissed employee of the extension and the reasons therefor.** If the Executive Officer determines that the information submitted by the dismissed

employee so warrants, the Executive Officer may grant the dismissed employee a blanket waiver to apply for any examination for which the dismissed employee meets the minimum qualifications. The Executive Officer shall set forth his or her decision in writing. A dismissed employee may appeal to the Board from the Executive Officer's decision within 30 days after receipt of that decision.